

FCC MAIL SECTION

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Federal Communications Commission
Washington, D.C. 20554

DISPATCHED BY

ET Docket No. 93-1 ✓

In the Matter of

Amendment of Parts 2 and 15 to
Prohibit Marketing of Radio Scanners
Capable of Intercepting Cellular
Telephone Conversations

NOTICE OF PROPOSED RULE MAKING

Adopted: January 4, 1993; Released: January 13, 1993

Comment Date: February 22, 1993

Reply Date: March 8, 1993

By the Commission:

INTRODUCTION

1. By this action, the Commission proposes to amend Parts 2 and 15 of its rules to prohibit the manufacture or importation of radio scanners capable of receiving frequencies allocated to the Domestic Public Cellular Radio Telecommunications Service.¹ This action is in response to the Telephone Disclosure and Dispute Resolution Act (Act), Pub. L. 102-556. The proposed rules are intended to increase the privacy protection of cellular telephone users without unduly restricting legitimate uses of scanners.

BACKGROUND

2. The Domestic Public Cellular Radio Telecommunications Service ("Cellular Radio Service") provides telephone service to mobile customers. Cellular telephones use frequencies in the bands 824-849 MHz and 869-894 MHz to connect their users to other cellular system users and to the Public Switched Telephone Network.

3. As defined within our rules scanning receivers, or "scanners," are radio receivers that automatically switch between four or more frequencies anywhere within the 30-960 MHz band.² In order to control their potential to cause harmful interference to authorized radio communications, the rules require that scanners receive an equipment authorization (certification) from the Commission prior to marketing.³ The Electronic Communications Privacy Act of 1986, Pub. L. 99-508, in part, made it illegal to

intentionally intercept cellular communications or to manufacture equipment primarily useful for the surreptitious interception of cellular communications.⁴ However, the Commission was not given specific authority to deny equipment authorization to scanners that receive cellular frequencies. As a result, scanners capable of receiving cellular frequencies are routinely authorized by the Commission.

4. In the past five years, 22 different models of scanning receivers capable of receiving cellular telephone transmissions have been issued grants of equipment authorization. During this same period, ten other models capable of tuning frequencies between 806 and 900 MHz *except* for the cellular bands have also been authorized. Several publications currently on the market describe relatively simple modifications that users can make to many of the latter scanning receivers to enable that equipment to receive cellular telephone transmissions.

5. On October 28, 1992, the President signed the Telephone Disclosure and Dispute Resolution Act into law. Section 403 of this Act amends the Communications Act of 1934 (47 U.S.C. Section 302) by requiring that by April 26, 1993 (180 days after enactment of the Act), the Commission prescribe and make effective regulations denying equipment authorization for any scanning receiver that is capable of:

- receiving transmissions in the frequencies allocated to the domestic cellular radio service,
- readily being altered by the user to receive transmissions in such frequencies, or
- being equipped with decoders that convert digital cellular transmissions to analog voice audio.

Further, new Section 302(d)(2) provides that, beginning one year after the effective date of the regulations adopted pursuant to paragraph (d)(1), no receiver having such capabilities shall be manufactured in the United States or imported for use in the United States.⁵

DISCUSSION

6. In accordance with Section 403 of the Act, we are proposing to deny equipment authorization to scanning receivers that tune frequencies used by cellular telephones. We are also proposing to require applicants for the authorization of scanning receivers to include in their applications a statement declaring that their receivers cannot be tuned to receive cellular telephone transmissions.

7. Developing regulations that deny equipment authorization to scanning receivers capable of "readily being altered by the user" to receive cellular telephone transmissions is somewhat more complicated. Most of the alterations that users can readily accomplish are possible because the microprocessor chips that control the tuning circuitry of many scanning receivers are designed to receive cellular telephone transmissions. Many scanners are

¹ The Commission's regulations regarding the Domestic Public Cellular Radio Telecommunications Service are set forth in Part 22 of the FCC rules, 47 CFR Part 22, Subpart K.

² See 47 CFR Section 15.3(v).

³ See 47 CFR Sections 15.101(a) and 2.1031 *et seq.*

⁴ See 18 U.S.C. Sec. 2511, 2512.

⁵ See Telephone Disclosure and Dispute Resolution Act, *supra.*, Section 403. Section 403 also requires that the Commission report to Congress, by June 1, 1993, on available security features for both analog and digital cellular radio signals. This reporting requirement will be dealt with separately from this proceeding.

marketed worldwide, and some countries do not prohibit scanning of the 824-849 MHz and 869-894 MHz bands. Prior to marketing one of these receivers in the United States, the manufacturer can choose to defeat the ability to receive cellular transmissions by adding a simple component such as a resistor, diode or jumper wire to the receiver's printed circuit board. In order to restore cellular coverage, the user simply has to remove the component that was added to block out this coverage. It is clear from the legislative history of the Telephone Disclosure and Dispute Resolution Act that Congress intended the Commission to craft rules that preclude such simple modifications.⁶

8. We are proposing to require that scanning receivers be incapable of being readily altered by the user to operate within the cellular bands. To assist us in determining whether a scanner complies with this requirement, we propose to require applicants for scanning receiver equipment authorization to include in their applications a statement pledging that their receivers cannot be readily altered to receive cellular telephone transmissions. We also propose to prohibit the authorization of any scanning receiver for which cellular coverage can be restored by cutting, or adding, a simple component such as a resistor, diode or jumper wire, or for which cellular coverage can be restored by unplugging a semiconductor chip and/or plugging in a new one. We solicit comment on this proposed reporting requirement and on the definition of "readily altered." We also seek comment on whether additional information, such as why the receiver cannot be readily altered, should be required.

9. In compliance with the requirements of the Telephone Disclosure and Dispute Resolution Act, we propose to deny equipment authorization to any scanning receiver that can be equipped with decoders that convert digital cellular transmissions to analog voice audio. We invite comment on the potential impact of this requirement on existing models of scanning receivers.

10. There currently are a number of frequency converters on the market that convert cellular radio transmissions in the 800 MHz band to lower frequencies. These devices can be used in conjunction with scanners that receive frequencies below 800 MHz to enable the reception of cellular telephone transmissions. To allow such converters to be marketed would be inconsistent with the intent of the Act. Accordingly, we are proposing to deny equipment authorization to converters that tune, or can be readily altered by the user to tune, cellular telephone frequencies.⁸ We will require that applicants for FCC equipment authorization of frequency converters used with scanners in-

clude in their applications a statement pledging that the converters cannot be easily altered to enable a scanner to receive cellular transmissions. We seek comment on whether this statement should also include evidence indicating why the converter cannot be easily modified.

11. Under the rules we are proposing, if the Commission discovers evidence that a scanning receiver, or a frequency converter used with a scanning receiver, can be readily altered to tune cellular frequencies after it has received a grant of equipment authorization, the Commission will consider whether the grant should be revoked, and whether the manufacturer(s), importer(s), wholesaler(s) and retailer(s) of the receiver should be subject to enforcement action for violating Section 302 of the Communications Act of 1934, as amended, and the Commission's rules.⁹

12. The proposed rules are shown in Appendix A. The relevant text of the Telephone Disclosure and Dispute Resolution Act is shown in Appendix B.

PROCEDURAL MATTERS

13. *Initial Regulatory Flexibility Analysis.* Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the Commission's initial analysis is as follows:

I. *Reason for Action:* The Telephone Disclosure and Dispute Resolution Act requires this action to be taken.

II. *Objective:* The objective of the proposed rules is to help ensure the privacy of participants in cellular telephone conversations by significantly reducing the availability of scanning receivers that can be used to eavesdrop on these conversations.

III. *Legal Basis:* Action is proposed in accordance with Sections 4(i), 302(d), 303(f), 303(g) and 303(r) of the Communications Act of 1934, as amended, and Pub. L. 102-556.

IV. *Description, potential impact and number of small entities affected:* The proposed changes in the regulations would likely affect fewer than 50 small entities. Manufacturers of scanning receivers, or frequency converters used with scanning receivers, that can receive, or be easily altered to receive, cellular telephone transmissions would be required to modify their designs. These manufacturers would also be required to provide written statements indicating that their devices cannot be easily altered when they submit applications for equipment authorization. This would result in some expense to manufacturers.

V. *Any significant alternative minimizing the impact on small entities and consistent with the stated objectives:* None.

⁶ See *Congressional Record - Senate*, October 9, 1992, at S17121.

⁷ One obvious way to address these requirements is to require scanning receiver manufacturers to design microprocessor chips that are not capable of tuning cellular transmissions in the first place. This solution could increase the cost, at least in the short term, of bringing new scanning receivers to market because microprocessor chips would have to be redesigned. We recognize that this solution might not be effective if replacement microprocessors were on the market that could be easily switched with the original microprocessor in order to restore cellular coverage. We seek comment on whether we should adopt regulations that require that no semiconductors in scanners be installed in sockets or that prohibit certain microprocessor models.

⁸ These converters are receivers subject to authorization under the notification procedure. See 47 CFR Section 15.101. We are not proposing to subject cable television converters, or similar devices that may be capable of tuning to cellular frequencies, to these requirements.

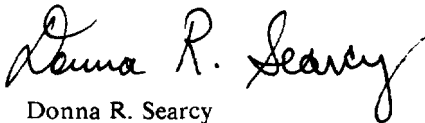
⁹ Sanctions may include administrative fines of up to \$10,000 for each violation or for each day of a continuing violation up to a total of \$75,000. They may also include federal court civil seizure and forfeiture of the non-compliant equipment inventory; and/or issuance of a federal court injunction against further violations; and/or criminal penalties, upon conviction, of a criminal fine of up to \$100,000 for individuals, \$200,000 for organizations, and/or imprisonment, for individuals, for up to one year or more. See 47 U.S.C. 501 and 503; and 18 U.S.C. 2512 and 3571.

14. *Comment Dates.* Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR Sections 1.415 and 1.419, interested parties may file comments on or before **February 22, 1993**, and reply comments on or before **March 8, 1993**. These abbreviated comment periods are necessary to comply with the requirements in the Telephone Disclosure and Dispute Resolution Act, and are unlikely to be extended. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room of the Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554.

15. *Ex Parte Rules - Non-Restricted Proceeding.* This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR Sections 1.1202, 1.1203 and 1.1206(a).

16. For further information on this proceeding contact David Wilson, Technical Standards Branch, Office of Engineering and Technology, 202-653-8138.

FEDERAL COMMUNICATIONS COMMISSION



Donna R. Searcy
Secretary

APPENDIX A

Part 2 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 2--FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 continues to read as follows:

AUTHORITY: Sec. 4, 302, 303 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 154(i), 302, 303, 303(r) and 307.

2. Section 2.975 is amended by adding a new paragraph (a)(8) to read as follows:

Section 2.975 Application for notification.

(a) * * *

(8) Applications for the notification of receivers contained in frequency converters used with scanning receivers shall be accompanied by an exhibit indicating compliance with the provisions of Section 15.121 of this Chapter.

* * * * *

3. Section 2.1033 is amended by adding a new paragraph (b)(12) to read as follows:

Section 2.1033 Application for certification.

* * * * *

(b) * * *

(12) Applications for the certification of scanning receivers under Part 15 shall be accompanied by an exhibit indicating compliance with the provisions of Section 15.121 of this Chapter.

* * * * *

Part 15 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 15--RADIO FREQUENCY DEVICES

1. The authority citation for Part 15 continues to read as follows:

AUTHORITY: Sec. 4, 302, 303 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303 and 307.

2. Section 15.37 is amended by revising paragraph (b), and adding a new paragraph (f), to read as follows:

Section 15.37 Transition provisions for compliance with the rules.

* * * * *

(b) * * * In addition, receivers are subject to the provisions in paragraph (f) of this Section.

* * * * *

(f) The manufacture or importation of scanning receivers, and frequency converters used with scanning receivers, that do not comply with the provisions of Section 15.121 of this Part shall cease on or before April 26, 1994. Effective April 26, 1993, the Commission will not accept applications for equipment authorization for receivers that do not comply with the provisions of Section 15.121 of this Part. This paragraph does not prohibit the sale or use of authorized receivers manufactured in the United States, or imported into the United States, prior to April 26, 1994.

3. Section 15.121 is added to read as follows:

Section 15.121 Scanning receivers and frequency converters used with scanning receivers.

Scanning receivers, and frequency converters used with scanning receivers, must be incapable of operating (tuning), or readily being altered by the user to operate, within the frequency bands allocated to the Domestic Public Cellular Radio Telecommunications Service. Receivers capable of "readily being altered by the user" include, but are not limited to, those for which the ability to receive transmissions in the restricted bands can be added by clipping the leads of, or installing, a diode, resistor and/or jumper wire; or replacing a plug-in semiconductor chip. Scanning receivers, and frequency converters used with scanning receivers, must also be incapable of converting digital cellular transmissions to analog voice audio.

APPENDIX B

Section 403 of the Telephone Disclosure and Dispute Resolution Act (Pub. L. 102-556, enacted October 28, 1992)

Sec. 403. INTERCEPTION OF CELLULAR TELECOMMUNICATIONS

(a) AMENDMENT. -- Section 302 of the Communications Act of 1934 (47 U.S.C. 302) is amended by adding at the end the following new subsection:

"(d)(1) Within 180 days after the date of enactment of this subsection, the Commission shall prescribe and make effective regulations denying equipment authorization (under part 15 of title 47, Code of Federal Regulations, or any other part of that title) for any scanning receiver that is capable of --

"(A) receiving transmissions in the frequencies allocated to the domestic cellular radio telecommunications service,

"(B) readily being altered by the user to receive transmissions in such frequencies, or

"(C) being equipped with decoders that convert digital cellular transmissions to analog voice audio.

"(2) Beginning 1 year after the effective date of the regulations adopted pursuant to paragraph (1), no receiver having the capabilities described in subparagraph (A), (B), or (C) or paragraph (1), as such capabilities are defined in such regulations, shall be manufactured in the United States or imported for use in the United States."

(b) REPORT TO CONGRESS. -- The Commission shall report to Congress no later than June 1, 1993, on available security features for both analog and digital radio signals. This report shall include a study of security technologies currently available as well as those in development. The study shall assess the capabilities of such technologies, level of security afforded, and cost, with wide-spread deployment of such technologies.

(c) EFFECT ON OTHER LAWS. -- This section shall not affect section 2512(2) of title 18, United States Code.